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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/598,378	08/25/2006	Timothy Williams	API09-06	3324
29680	7590	08/21/2008		
DAVID A. GUERRA INTERNATIONAL PATENT GROUP, LLC 2025 17TH AVENUE N.W. CALGARY, AB T2M 0S7 CANADA			EXAMINER CERNOCH, STEVEN MICHAEL	
			ART UNIT	PAPER NUMBER
			3752	
			MAIL DATE	DELIVERY MODE
			08/21/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/598,378

**Applicant(s)**

WILLIAMS, TIMOTHY

**Examiner**

STEVEN CERNOCH

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 1-13 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 22-29 is/are allowed.
- 6) ☒ Claim(s) 14-19 and 30 is/are rejected.
- 7) ☒ Claim(s) 20, 21 and 31-33 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 8/25/2006
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Allowable Subject Matter***

Claims 20, 21 and 31-33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 30 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Claims 22-29 are allowed.

### ***Claim Objections***

Claim 20 objected to because of the following informalities: dependent upon cancelled claim 13. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 14 and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re claims 14 and 30, it has been held that the recitation that an element is "adapted to" perform a function in not a positive limitation but only requires the ability to

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so perform. it does not constitute a limitation in any patentable sense. In re Hutchison, 69 USPQ 138.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 14, 15 and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Lubrano et al. (US Pat No 4,638,654).

Re claim 14, Lubrano et al. shows a spray bar (Fig. 1, 1) for applying fluids onto an adjacent surface, said spray bar comprising: an inner tube (Fig. 2, 10) having a pathway (11) defined longitudinally there through adapted to receive a fluid, and at least one aperture (13) through the wall of said inner tube and in communication with said pathway; an outer tube (Fig. 1, 7) adapted to receive said inner tube therein, said outer tube having at least one aperture (8) through the wall of said outer tube arranged such that said inner tube aperture and said outer tube aperture can be caused to align (column 3, lines 35-45); at least one spray nozzle mountable on the outer wall of said outer tube in communication with said outer tube aperture (Fig. 1, 8); and an actuator means (column 3, line 63) arranged to cause said inner tube to move relative to said

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outer tube thereby causing said apertures in said inner and outer tubes to move into and out of alignment.

Re claim 15, Lubrano et al. shows wherein said inner and outer tubes have multiple corresponding apertures (Fig. 1, 8 and Fig. 2, 13,14) spaced along their respective lengths, with a spray nozzle associated with each aperture in said outer tube.

Re claim 17, Lubrano et al. shows wherein said apertures in said outer tube are substantially the same size and shape (Fig. 1, 8), and are substantially equally spaced in a common axial plane along the length of said spray bar.

Re claim 18, Lubrano et al. shows wherein said apertures are of various sizes and shapes (column 2, lines 65-68).

Re claim 19, Lubrano et al. shows wherein said apertures are located in different axial planes (column 2, lines 65-68).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lubrano et al. (US Pat No 4,638,654) in view of Abbasov et al. (SU 1641212 A).

Re claim 16, Lubrano et al. does not teach a return pathway for fluid that does not pass out through said spray nozzles in use, enabling the fluid to circulate.

However, Abbasov et al. does teach a return pathway for fluid that does not pass out through said spray nozzles in use, enabling the fluid to circulate (abstract).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have the motivation to modify the apparatus of Lubrano et al. with the path of Abbasov et al. to prevent hydraulic shock (abstract).

### ***Conclusion***

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEVEN CERNOCH whose telephone number is (571)270-3540. The examiner can normally be reached on IFP.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on (571)272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. C./

Examiner, Art Unit 3752

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/Len Tran/

Supervisory Patent Examiner, Art Unit 3752